
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

GERARDO THOMAS GARZA,

Plaintiff,

v.

STEVEN TURLEY, ET AL.,

Defendants.

**MEMORANDUM DECISION AND
ORDER GRANTING EXTENSION OF
TIME TO FILE NOTICE OF APPEAL**

Case No. 2:09CV801DAK

Judge Dale A. Kimball

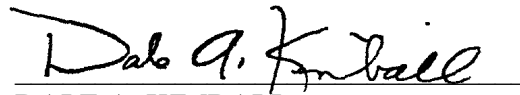
This matter is before the court on Plaintiff's motion for an extension of time to file a notice of appeal. Pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, a party in a civil case must file a notice of appeal within thirty days after the entry of judgment. Under Federal Rule of Appellate Procedure 4(a)(5), a district court may extend the time to file a notice of appeal if: (1) the party so moves within the thirty day period to file the notice of appeal or (2) regardless of whether the motion is filed during the thirty day time period, the party demonstrates excusable neglect or good cause.

Judgment was entered in this case on February 24, 2011. Defendant's motion for an extension of time was mistakenly filed in the Utah Court of Appeals on March 22, 2011. The motion was then sent to this court and received on April 11, 2011. Pursuant to Federal Rule of Appellate Procedure 4(d), a mistaken filing in the court of appeals is considered filed on the date

noted by the court of appeals. While Rule 4(d) appears to refer to the federal court of appeals, the court believes the same policy would apply to a mistaken filing in the state appellate court. The state appellate court in this case noted the date the filing was received and forwarded it to this court in the same manner that the federal court of appeals would have proceeded.

Accordingly, whether the court deems the motion for an extension of time to file the notice of appeal timely under Rule 4(d) and Rule 4(a)(5)(A)(i) or Rule 4(a)(5)(A)(ii) for excusable neglect based on the mistaken filing, the court grants Plaintiff an additional thirty days in which to file his notice of appeal. Such notice must be filed in this court by April 25, 2011 to be timely.

DATED this 13th day of April, 2011.


DALE A. KIMBALL
United States District Judge